

UNITED STATE OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT and LICENSE NO. 465637
Issued to: Salvatore F. Solline BK-337 956

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2230

Salvatore F. Solline

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 25 September 1979, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, suspended Appellant's documents for two months, on six months' probation, upon finding him guilty of misconduct. The specification found proved alleged that, while serving as First Assistant Engineer on board the SS KEYSTONE CANYOU under authority of the captioned documents on or about 23 August 1979, Appellant wrongfully engaged in mutual combat with crewmember Clarence Crocker by striking him with his fists and shoving him, while the vessel was at sea.

The hearing was held at Long Beach, California, on 30 August and 13 September 1979.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced into evidence three exhibits and the testimony of one witness.

In defense, Appellant introduced into evidence the testimony of five witnesses, including his own testimony.

At the end of the hearing the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then entered an order suspending all documents issued to Appellant for a period of two months on six months' probation.

The entire decision was served on 27 September 1979. Appeal was timely filed on 28 September 1979 and perfected after several extensions on 30 June 1980.

FINDINGS OF FACT

On 23 August 1979, Appellant was serving as First Assistant Engineer on board SS KEYSTONE CANYON and acting under authority of his license and document while the vessel was at sea. At about 0800 on that date, Appellant bickered with Clarence Crocker over a work assignment of the latter. During their heated discussion, and in the presence of several witnesses, Appellant told Crocker to "shut up, God damn it." Crocker replied that "if you curse me again, I am going to knock the hell out of you." Crocker departed the engineroom at Appellant's direction and went to the elevator. Appellant followed Crocker and they argued again, resulting in a shoving match and an exchange of blows. Both men lost their glasses but neither sustained grievous injury, though Appellant received somewhat the worst of it. Shortly thereafter, independently, each man reported the incident to the Master.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that the decision of the Administrative Law Judge is not supported by substantial evidence.

APPEARANCE: Fogel, Julber, Reinhardt, Rothschild & Feldman of Los Angeles, by J. Clark Aristei, Esq.

OPINION

Although Appellant contends that the evidence in this case does not meet the standard of 46 CFR 5.20-95(b), his central argument actually is concerned with the weight to be assigned to testimony of various persons. Appellant urges, for example, that little weight should be given to Crocker's Testimony. Appellant quite rightly recognizes that in large part the decision in this case resulted from Crocker's testimony.

Appellant is correct in his assertion that some contradictory testimony was elicited during the proceedings. This does not in any way affect the outcome. It has been consistently held that: "[t]he administrative reviewing authority will not second-guess the judge as to the credibility of witnesses or the weight accorded the various items of evidence." Appeal Decision No. 1928. This is particularly true when a decision turns on the credibility of the witnesses. It is well established that the opportunity of the Administrative Law Judge to observe the demeanor of the witnesses affords him a significant advantage when it becomes necessary to choose between conflicting versions of an event. Where, as here, the evidence from witnesses other than the principals was inconclusive, it was neither arbitrary nor capricious for the

decision to turn on the credibility of the witnesses. See Appeal Decision Nos. 2052,1292 and 1127.

The uncontested facts demonstrate that both individuals involved freely left the console room and that combat ensued beyond the sight of any witness. Mutuality may be inferred from the conduct of the parties, and absent convincing evidence to the contrary, the Administrative Law Judge was free to accept the inference as controlling. Appeal Decisions Nos. 2196 and 1964. Since the witnesses' testimony supported Crocker's version, that he departed the console room first, the evidence available comports with the decision of the Administrative Law Judge.

CONCLUSION

There is substantial evidence of a reliable and probative character to support the findings and decision of the Administrative Law Judge.

ORDER

The order of the Administrative Law Judge dated at Long Beach, California, on 25 September 1979, is AFFIRMED.

R. H. SCARBOROUGH
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D. C., this 18th day of August 1980.